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13 Corporation

14
15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF ARIZONA**

17 Kimberly Brennan, an individual; Carmen
18 Ponce, an individual,

19 Plaintiffs,

20 v.
21 Johnny Hernandez, an individual; Crete
22 Carrier Corporation, an Arizona foreign
23 for-profit corporation; John and Jane Does
24 1-10; and White Partnerships 1-10;

25 Defendants.

26 No. 2:24-cv-01740-ASB

27 **DEFENDANT CRETE CARRIER**
28 **CORPORATION'S ANSWER**

19 Defendant Crete Carrier Corporation (Hereinafter "Defendant Crete"), by
20 and through undersigned counsel, for their Answer to Plaintiffs' Complaint, admits, denies,
21 and alleges as follows:

22 **PARTIES, JURISDICTION, VENUE, AND TIER**

23 1. Upon information and belief, Defendant Crete admits the allegations
24 contained in Paragraph 1 of Plaintiffs' Complaint.

25 2. Upon information and belief, Defendant Crete admits the allegations
26 contained in Paragraph 2 of Plaintiffs' Complaint.

27 3. Upon information and belief, Defendant Crete admits the allegations
28 contained in Paragraph 3 of Plaintiffs' Complaint.

1 4. Defendant Crete admits the allegations in Paragraph 4 of Plaintiffs'
2 Complaint insofar that it is a for-profit corporation doing business currently and at all
3 relevant times of this Complaint in Maricopa County. Defendant Crete affirmatively asserts
4 it is a Nebraska Corporation. Defendant Crete denies the remaining allegations contained
5 in Paragraph 4 of Plaintiffs' Complaint.

6 5. The allegations contained in Paragraph 5 of Plaintiffs' Complaint are
7 against fictitious parties and are not directed towards Defendant Crete. The allegations are
8 therefore not addressed herein. To the extent a response is required, Defendant Crete lacks
9 sufficient information to form a belief as to the truth of the allegations contained in
10 Paragraph 5 of Plaintiffs' Complaint and therefore deny the same.

11 6. Defendant Crete denies the allegations contained in Paragraph 6 of
12 Plaintiffs' Complaint. Defendant Crete affirmatively asserts that The United States District
13 Court, District of Arizona has diversity jurisdiction over the case as complete diversity of
14 the parties is present and the amount in controversy exceeds \$75,000.

15 7. Defendant Crete denies the allegations contained in Paragraph 7 of
16 Plaintiffs' Complaint. Defendant Crete affirmatively asserts that The United States District
17 Court, District of Arizona is the proper venue as the Parties are diverse and the amount in
18 controversy exceeds \$75,000.

19 8. Defendant Crete lacks foundation to admit or deny the allegations
20 contained within Paragraph 8 of Plaintiffs' Complaint but acknowledges that the amount
21 in controversy exceeds \$75,000. Defendant Crete affirmatively asserts that tiers are not
22 applicable in The District Court of Arizona, which is the proper jurisdiction and venue in
23 this lawsuit. Defendant Crete would not object to Tier 3 classification, were it to become
24 applicable.

GENERAL ALLEGATIONS

26 9. Defendant Crete admits the allegations contained in Paragraph 9 of
27 Plaintiffs' Complaint insofar that Plaintiff Kimberly Brennan was a passenger in a vehicle
28 at the intersection of North 27th Avenue and West Van Buren Street in Phoenix, Arizona.

1 Defendant Crete lacks sufficient information to admit the remaining allegations in
2 Plaintiffs' Complaint as Plaintiff Carmen Ponce is not listed as a passenger in the AZDPS
3 Report, therefore they are denied pending further discovery.

4 10. Defendant Crete admits the allegations contained in Paragraph 10 of
5 Plaintiffs' Complaint.

6 11. Defendant Crete lacks sufficient information to form a belief as to the
7 truth of the allegations contained in Paragraph 11 of Plaintiffs' Complaint as it relates to
8 whether Defendant Johnny Hernandez currently holds a valid Commercial Driver's
9 License (CDL) and therefore takes no position pending further discovery. Defendant Crete
10 admits that Defendant Johnny Hernandez held a valid CDL at the time of the accident that
11 is the subject of this lawsuit.

12 12. Defendant Crete denies the allegations contained in Paragraph 12 of
13 Plaintiffs' Complaint and affirmatively asserts that Defendant Hernandez was operating a
14 tractor-trailer with a gross vehicle weight rating in excess of 26,000 pounds.

15 13. Defendant Crete admits the allegations contained in Paragraph 13 of
16 Plaintiffs' Complaint insofar that Defendant Johnny Hernandez was within the course and
17 scope of his employment with Defendant Crete at the time of the accident that is the subject
18 of this lawsuit.

19 14. Defendant lacks sufficient information to form a belief as to the truth
20 of the allegations contained in Paragraph 14 of Plaintiffs' Complaint and therefore takes
21 no position pending further discovery.

22 15. Defendant Crete lacks sufficient information to form a belief as to the
23 truth of the allegations contained in Paragraph 15 of Plaintiffs' Complaint and therefore
24 denies the same pending further discovery.

25 16. Defendant Crete admits the allegations contained in Paragraph 16 of
26 Plaintiffs' complaint insofar that Defendant Johnny Hernandez made a right-hand turn and
27 that his vehicle came into contact with Plaintiffs' vehicle. Defendant Crete lacks sufficient
28 information to form a belief as to the truth of the remaining allegations contained in

1 Paragraph 16 of Plaintiffs' Complaint and therefore takes no position pending further
2 discovery.

3 17. Defendant Crete lacks sufficient information to form a belief as to the
4 truth of the allegations contained in Paragraph 17 of Plaintiffs' Complaint and therefore
5 takes no position pending further discovery.

6 18. Defendant Crete denies the allegations contained in Paragraph 18 of
7 Plaintiffs' Complaint.

8 19. Defendant Crete admits the allegations contained in Paragraph 19 of
9 Plaintiffs' Complaint.

10 20. Defendant Crete denies the allegations contained in Paragraph 20 of
11 Plaintiffs' Complaint.

12 21. Defendant Crete denies the allegations contained in Paragraph 21 of
13 Plaintiffs' Complaint.

14 22. Defendant Crete lacks denies the allegations contained in Paragraph
15 22 of Plaintiffs' Complaint.

COUNT I – NEGLIGENCE

17 23. Defendant Crete incorporates all the foregoing Paragraphs as if fully
18 stated herein.

19 24. Defendant Crete admits the allegations contained in Paragraph 24 of
20 Plaintiffs' Complaint insofar that Defendant Johnny Hernandez as a commercial driver is
21 required to comply with the Federal Motor Carrier Safety Regulations and State Laws as it
22 relates to training. Defendant Crete denies the remaining allegations contained in
23 Paragraph 24 of Plaintiffs' Complaint. Defendant Crete affirmatively asserts that the
24 allegations in Paragraph 24 of Plaintiffs' Complaint are ambiguous and vague as it relates
25 to "specialized training".

26 25. Defendant Crete denies the allegations contained in Paragraph 25 of
27 Plaintiffs' Complaint and alleges that Defendant Hernandez was operating a tractor-trailer
28 with a gross vehicle weight rating in excess of 26,000 pounds.

1 26. Defendant Crete admits the allegations contained in Paragraph 26 of
2 Plaintiffs' Complaint insofar that that Defendant Johnny Hernandez had a duty as a
3 commercial driver to follow the Federal Motor Carrier Safety Regulations and State Laws
4 while operating a commercial vehicle. Defendant Crete denies the remaining allegations
5 contained in Paragraph 26 of Plaintiffs' Complaint.

6 27. Defendant Crete denies the allegations contained in Paragraph 27 of
7 Plaintiffs' Complaint.

8 28. Defendant Crete admits the allegations contained in Paragraph 28 of
9 Plaintiffs' Complaint insofar that at the time of the accident that is the subject of this lawsuit
10 Defendant Johnny Hernandez was acting within the course and scope of his employment
11 with Defendant Crete. Defendant Crete also admits that if Defendant Johnny Hernandez is
12 found negligent, then Defendant Crete would be vicariously liable under the doctrine of
13 respondeat superior. Defendant Crete denies the remaining allegations contained in
14 Paragraph 28 of Plaintiffs' Complaint.

15 29. Defendant Crete denies the allegations contained in Paragraph 29 of
16 Plaintiffs' Complaint.

17 30. Defendant Crete denies the allegations contained in Paragraph 30 of
18 Plaintiffs' Complaint.

COUNT II – NEGLIGENCE PER SE

20 31. Defendant Crete incorporates all the foregoing Paragraphs as if fully
21 stated herein.

22 32. Defendant Crete denies the allegations contained in Paragraph 32 of
23 Plaintiffs' Complaint.

24 33. Defendant Crete denies the allegations contained in Paragraph 33 of
25 Plaintiffs' Complaint.

26 34. Defendant Crete admits the allegations contained in Paragraph 34 of
27 Plaintiffs' Complaint insofar that at the time of the accident that is the subject of this lawsuit
28 Defendant Johnny Hernandez was acting within the course and scope of his employment

1 with Defendant Crete. Defendant Crete also admits that if Defendant Johnny Hernandez is
 2 found negligent, then Defendant Crete would be vicariously liable under the doctrine of
 3 respondeat superior. Defendant Crete denies the remaining allegations contained in
 4 Paragraph 34 of Plaintiffs' Complaint.

5 **AFFIRMATIVE DEFENSES**

6 1. As and for a separate defense and in the alternative, Defendant Crete
 7 alleges the imposition of punitive damages under Arizona law violates the Equal Protection
 8 Clause of the Fifth and Fourteenth Amendments of the United States Constitution, as well
 9 as the Contract Clause in each of the following ways.

10 a. Arizona law permits the imposition of unlimited punitive
 11 damages that are vastly disproportionate to any actual or compensatory injuries thereby
 12 violating the Fourteenth Amendment of the United States Constitution.

13 b. Disproportionate punitive damages constitute an arbitrary and
 14 capricious taking of property which is unjustified by any rational governmental interest
 15 thereby violating the Fifth and Fourteenth Amendments of the United States Constitution.

16 c. The award of any punitive damages without certain safeguards
 17 to guard the jury's discretion in determining the amount of damages is contrary to due
 18 process under the Fourteenth Amendment of the United States Constitution.

19 d. Arizona does not provide a reasonable limit on the amount of
 20 any punitive damage award thus violating the Fourteenth Amendment of the United States
 21 Constitution.

22 2. As and for a separate defense and in the alternative, Defendant Crete
 23 alleges that Plaintiffs' Complaint fails to state a claim upon which relief may be granted
 24 against Defendants.

25 3. As and for a separate defense and in the alternative, Defendant Crete
 26 alleges that Plaintiffs have failed to mitigate their damages, thus barring or reducing the
 27 recovery against Defendants.

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1 4. As and for a separate defense and in the alternative, Defendant Crete
 2 alleges that the Plaintiffs were contributorily negligent and/or any damages received by the
 3 Plaintiffs were the result of an intervening/superseding cause or occurred as a result of the
 4 negligence of someone other than these Defendants, all of which bars recovery to the
 5 Plaintiff herein from Defendants.

6 5. As and for a separate defense and in the alternative, Defendant Crete
 7 alleges that the Plaintiffs were negligent, in whole or in part, thereby reducing or
 8 eliminating any damages owing by Defendants by way of comparative negligence.

9 6. As and for a separate defense and in the alternative, Defendant Crete
 10 alleges that if, indeed, it is determined to be liable for the allegations alleged in the
 11 Complaint, then Defendants are entitled to contribution from other Defendants, named and
 12 unnamed, by way of the doctrine of contribution.

13 7. Although Defendant Crete does not presently have specific facts in
 14 support of the remaining defenses, it wishes to put counsel for Plaintiffs upon notice that it
 15 raises the following defenses which, through subsequent discovery may, indeed, be
 16 supported by the facts: lack of jurisdiction over the subject matter, lack of jurisdiction over
 17 the person, accord and satisfaction, arbitration and award, discharge in bankruptcy, duress,
 18 estoppel, set-off, failure to join an indispensable party, failure of consideration, fraud,
 19 illegality, laches, license, payment, release, res judicata, statute of frauds, statute of
 20 limitations, insufficiency of process and insufficiency of service of process, and waiver.

21 WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant
 22 Crete prays that same be dismissed, and that Defendant Crete be awarded its costs and
 23 attorney's fees incurred herein.

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DATED this 22nd day of July, 2024.
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JONES, SKELTON & HOCHULI, P.L.C.
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By /s/ Lauren D. Norton
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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of July, 2024, I caused the foregoing document to be filed electronically with the Clerk of Court through the CM/ECF System for filing; and served on counsel of record via the Court's CM/ECF system.

/s/ Gail Hardin